

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 529, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1           Page 4, delete lines 23 through 28, begin a new paragraph and insert:  
2           "SECTION 12. IC 31-9-2-40 IS AMENDED TO READ AS  
3           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 40. "Director", for  
4           purposes of IC 31-33, IC 31-34, and IC 31-37, refers to the director of  
5           the ~~division of family and children~~ **department of child services**.  
6           SECTION 13. IC 31-16-15-1 IS AMENDED TO READ AS  
7           FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) In a  
8           proceeding under IC 31-14 or IC 31-16-2 through IC 31-16-12 to  
9           establish, modify, or enforce a child support order, the court shall:  
10           (1) enter an order for immediate income withholding; and  
11           (2) modify any previously issued income withholding order that  
12           has not been activated under this chapter to provide for immediate  
13           income withholding.  
14           (b) The court shall issue the income withholding order to the income  
15           payor not later than fifteen (15) calendar days after the court's  
16           determination.  
17           (c) The income withholding order must order income payors to send  
18           to the ~~clerk of the court~~ **state central collection unit** or other person  
19           specified in the support order under:  
20           (1) IC 31-14-11-11;  
21           (2) IC 31-16-4; or  
22           (3) IC 31-16-9;

the amount of income established by the court for child support at the time the order for child support is established, enforced, or modified.

(d) However, the court shall issue an income withholding order that will not become activated except upon the occurrence of the two (2) conditions described in section 2 of this chapter if:

- (1) the parties submit a written agreement providing for an alternative child support arrangement; or
- (2) the court determines that good cause exists not to require immediate income withholding.

(e) A finding of good cause under subsection (d)(2) must:

- (1) be written; and
- (2) include:
  - (A) all reasons why immediate income withholding is not in the best interests of the child; and
  - (B) if the case involves a modification of support, a statement that past support has been timely paid.

(f) The income withholding order must contain a statement that if the withholding order is activated, income payors will be ordered to send to the ~~clerk of the court~~ **state central collection unit** or other person specified in the support order under:

- (1) IC 31-14-11-11;
- (2) IC 31-16-4; or
- (3) IC 31-16-9;

the amount of income established by the court for child support.

SECTION 14. IC 31-16-15-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This section applies to the implementation of income withholding under an order issued under sections 1 and 3 of this chapter.

(b) If the Title IV-D agency or the court becomes aware that the obligor has an income payor to whom a notice has not been sent under subsection (c) or an income payor to whom notice of delinquent support has not been sent under subsection (c):

- (1) the Title IV-D agency in a case arising under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669); or
- (2) the court;

shall not later than fifteen (15) calendar days after becoming aware of an income payor send a written notice to the income payor that the withholding is binding on the income payor.

(c) The notice to an income payor under this section must contain a statement of the following:

- (1) That the income payor is required to withhold a certain amount of income from the obligor.

- (2) That the total amount to be withheld under court order by the obligor's income payor from the obligor's income is the sum of:
- (A) the obligor's current child support obligation;
  - (B) an amount to be applied toward the liquidation of any arrearages; and
  - (C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the ~~clerk of the court state~~ **central collection unit** or other person specified in the notice; up to the maximum amount permitted under 15 U.S.C. 1673(b).
- (3) That the income payor shall:
- (A) forward the withheld income described in subdivision (2)(A) and (2)(B) to the ~~clerk of the court state~~ **central collection unit** or other person named in the notice at the same time that the obligor is paid; and
  - (B) include a statement identifying:
    - (i) each cause number;
    - (ii) the name of each obligor; and
    - (iii) the name of each payee with the withheld income forwarded by the income payor.
- (4) That withholding is binding upon the income payor until further notice from a Title IV-D agency.
- (5) That the obligor may recover from the income payor in a civil action an amount not less than one hundred dollars (\$100) if the income payor:
- (A) discharges the obligor from employment;
  - (B) refuses the obligor employment; or
  - (C) disciplines the obligor;
- solely because the income payor is required to forward income under this chapter.
- (6) That the income payor is liable for any amount that the income payor fails to forward under this chapter.
- (7) That withholding under this chapter has priority over any secured or unsecured claim on income except claims for federal, state, and local taxes.
- (8) That, if the income payor is required to withhold income from more than one (1) obligor, the income payor may:
- (A) combine in a single payment the withheld amounts for all obligors who have been ordered to pay the ~~same clerk state~~ **central collection unit** or other governmental agency; and
  - (B) separately identify the part of the single payment that is attributable to each individual obligor.

- 1 (9) That if:
- 2 (A) there is more than one (1) order for withholding against a
- 3 single obligor; and
- 4 (B) the obligor has insufficient disposable earnings to pay the
- 5 amount required by all the orders;
- 6 the income payor shall distribute the withheld earnings pro rata
- 7 among the entities entitled to receive earnings under the orders,
- 8 giving priority to a current support withholding order. The income
- 9 payor shall honor all withholdings to the extent that the total
- 10 amount withheld does not exceed the limits imposed under 15
- 11 U.S.C. 1673(b).
- 12 (10) That the income payor shall implement withholding not later
- 13 than the first pay date after fourteen (14) days following the date
- 14 the notice was received.
- 15 (11) That the income payor shall:
- 16 (A) notify:
- 17 (i) the Title IV-D agency if the Title IV-D agency gives the
- 18 notice under this section; or
- 19 (ii) the court if the court gives the notice under this section;
- 20 when the obligor ceases employment or no longer receives
- 21 income not later than ten (10) days after the employment or
- 22 income ceases; and
- 23 (B) provide:
- 24 (i) the obligor's last known address; and
- 25 (ii) the name and address of the obligor's new income payor,
- 26 if known.
- 27 SECTION 15. IC 31-16-15-7 IS AMENDED TO READ AS
- 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Whenever
- 29 an income withholding order is to be:
- 30 (1) activated in a case arising under section 5 of this chapter; or
- 31 (2) implemented by a Title IV-D agency under section 3 of this
- 32 chapter despite the absence of a withholding order in the support
- 33 order;
- 34 the Title IV-D agency shall send a written notice to the obligor.
- 35 (b) The notice required under subsection (a) must contain a
- 36 statement of the following:
- 37 (1) Whether the obligor is delinquent in the payment of child
- 38 support.
- 39 (2) The amount of child support, if any, that the obligor is in
- 40 arrears.
- 41 (3) That a certain amount of income is to be:
- 42 (A) withheld under court order or action by the Title IV-D

agency from the obligor's income; and

(B) forwarded to the ~~clerk of the court~~ **state central collection unit or other person named in the notice.**

(4) That the total amount to be withheld under court order or action by the Title IV-D agency by the obligor's income payor from the obligor's income is the sum of:

(A) the obligor's current monthly child support obligation;

(B) an amount to be applied toward the liquidation of any arrearages; and

(C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the clerk of the court or other person specified in the notice to the income payor under this chapter;

up to the maximum amount permitted under 15 U.S.C. 1673(b).

(5) That the provision for withholding applies to the receipt of any current or subsequent income.

(6) That the only basis for contesting activation of income withholding is a mistake of fact.

(7) That an obligor may contest the Title IV-D agency's determination to activate income withholding by making written application to the Title IV-D agency not later than twenty (20) days after the date the notice is mailed.

(8) That if the obligor contests the Title IV-D agency's determination to activate the income withholding order, the Title IV-D agency shall schedule an administrative hearing.

(9) That if the obligor does not contest the Title IV-D agency's determination to activate the income withholding order, the Title IV-D agency will activate income withholding.

(10) That income withholding will continue until a court or the Title IV-D agency terminates activation of income withholding.

SECTION 16. IC 31-16-15-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) If a petition to activate an income withholding order is filed under section 6(2) or 6(3) of this chapter, the court shall set a date for a hearing on the petition that is not later than twenty (20) days after the date the petition is filed. The court shall send a summons and a written notice to the obligor. The notice must contain a statement of the following:

(1) Whether the obligor is delinquent in the payment of child support.

(2) The amount of child support, if any, that the obligor is in arrears.

(3) That a certain amount for the payment of current and past due child support is to be withheld each month from the obligor's income and forwarded to the ~~clerk of the court~~ **state central collection unit or other person named in the notice.**

(4) That the total amount to be withheld each month by the obligor's income payor from the obligor's income is the sum of:

(A) the obligor's current monthly child support obligation;

(B) an amount to be applied toward the liquidation of any arrearages; and

(C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the ~~clerk of the court~~ **state central collection unit or other person named in the notice;**

up to the maximum amount permitted under 15 U.S.C. 1673(b).

(5) That the provision for withholding applies to receipt of any current or subsequent income.

(6) That any of the following constitutes a basis for contesting the withholding:

(A) A mistake of fact.

(B) The parties have submitted a written agreement providing for an alternative child support arrangement.

(C) A court determines that good cause exists not to require immediate income withholding.

(7) That income withholding will continue until the activation of the income withholding order is terminated by the court.

(8) That if the obligor does not appear at the hearing, the court will activate the income withholding order.

(b) If:

(1) the obligor does not appear at the hearing on the petition filed under section 6(2) or 6(3) of this chapter; or

(2) the court grants the petition;

the court shall activate the income withholding order by mailing a written notice to the income payor as provided in section 10 of this chapter.

SECTION 17. IC 31-16-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) To activate or implement an income withholding order, in addition to the notice requirements imposed by sections 7 and 8 of this chapter:

(1) the Title IV-D agency in a case arising under section 3 or 5 of this chapter; or

(2) the court in a case arising under section 6 of this chapter;

shall mail a written notice to each income payor not later than fifteen

1 (15) calendar days after the issuance of the income withholding order.

2 (b) The notice to each income payor must contain a statement of the  
3 following:

4 (1) That the income payor is required to withhold a certain amount  
5 of income from the obligor.

6 (2) That the total amount to be withheld each month by the  
7 obligor's income payor from the obligor's income is the sum of:

8 (A) the obligor's current monthly child support obligation;

9 (B) an amount to be applied toward the liquidation of any  
10 arrearages; and

11 (C) an optional fee of two dollars (\$2), which is payable to and  
12 imposed at the option of the income payor, each time the  
13 income payor forwards income to the ~~clerk of the court~~, **state**  
14 **central collection unit or other person named in the notice;**

15 up to the maximum amount permitted under 15 U.S.C. 1673(b).

16 (3) That the income payor shall:

17 (A) forward the withheld income described in subdivision

18 (2)(A) and (2)(B) to the ~~clerk of the court~~ or the state central  
19 collection unit **or other person** named in the notice at the  
20 same time that the obligor is paid; and

21 (B) include a statement identifying:

22 (i) each cause number;

23 (ii) the Indiana support enforcement tracking system  
24 (SETS) case number;

25 (iii) the name of each obligor; ~~and~~

26 (iv) the name of each payee with the withheld income  
27 forwarded by the income payor; **and**

28 **(v) the obligor's Social Security number.**

29 (4) That withholding is binding upon the income payor until  
30 further notice.

31 (5) That the obligor may recover from the income payor in a civil  
32 action an amount not less than one hundred dollars (\$100) if the  
33 income payor:

34 (A) discharges the obligor from employment;

35 (B) refuses the obligor employment; or

36 (C) disciplines the obligor;

37 because the income payor is required to forward income under this  
38 chapter.

39 (6) That the income payor is liable for any amount that the income  
40 payor fails to forward under this chapter.

41 (7) That withholding under this chapter has priority over any  
42 secured or unsecured claim on income except claims for federal,

state, and local taxes.

(8) That, if the income payor is required to withhold income from more than one (1) obligor, the income payor may:

(A) combine in a single payment the withheld amounts for all obligors who have been ordered to pay the ~~same clerk state~~

**central collection unit** or other governmental agency; and

(B) separately identify the part of the single payment that is attributable to each individual obligor.

(9) That if:

(A) there is more than one (1) order for withholding against a single obligor; and

(B) the obligor has insufficient disposable earnings to pay the amount required by all the orders;

the income payor shall distribute the withheld earnings pro rata among the entities entitled to receive earnings under the orders, giving priority to a current support withholding order, and shall honor all withholdings to the extent that the total amount withheld does not exceed the limits imposed under 15 U.S.C. 1673(b).

(10) That the income payor shall implement withholding not later than the first pay date after fourteen (14) days following the date the notice was received.

(11) That the income payor shall:

(A) notify:

(i) the Title IV-D agency in a case arising under section 5 of this chapter; or

(ii) the court in a case arising under section 1 or 6 of this chapter;

when the obligor terminates employment or ceases to receive other income not later than ten (10) days after termination; and

(B) provide:

(i) the obligor's last known address; and

(ii) the name and address of the obligor's new income payor if known.

SECTION 18. IC 31-16-15-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) An income payor that is required to withhold income under this chapter shall:

(1) forward income withheld for the payment of current and past due child support to the ~~clerk of the court~~; the state central collection unit or other person named in the notice at the same time that the obligor is paid;

(2) include a statement identifying:

(A) each cause number;



- 1 (B) the Indiana support enforcement tracking system (ISETS)  
 2 case number;
- 3 (C) the name of each obligor **and the obligor's Social**  
 4 **Security number;** and
- 5 (D) the name of each payee with the withheld income  
 6 forwarded by the income payor; and
- 7 (3) implement withholding not later than the first pay date after  
 8 fourteen (14) days following the date the notice was received.
- 9 (b) The income payor may retain, in addition to the amount required  
 10 to be forwarded to the ~~clerk of court~~ **state central collection unit** under  
 11 subsection (a), a fee of two dollars (\$2) from the obligor's income each  
 12 time the income payor forwards income to the ~~clerk of the court~~ **state**  
 13 **central collection unit** or other person specified in the notice to an  
 14 income payor under this chapter. If the income payor elects to withhold  
 15 the fee, the amount to be withheld for the payment of current and past  
 16 due child support must be reduced accordingly if necessary to avoid  
 17 exceeding the maximum amount permitted to be withheld under 15  
 18 U.S.C. 1673(b).
- 19 SECTION 19. IC 31-16-15-16 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) Except as  
 21 provided in subsection (b), if the income payor is required to withhold  
 22 income from more than one (1) obligor under this chapter, the income  
 23 payor may:
- 24 (1) combine in a single payment the withheld amounts for all  
 25 obligors who have been ordered to pay to the ~~same clerk~~ **state**  
 26 **central collection unit** or other governmental agency; and
- 27 (2) separately identify the part of the single payment that is  
 28 attributable to each individual obligor.
- 29 (b) If the income payor:
- 30 (1) is required to withhold income from more than one (1) obligor  
 31 under this chapter; and
- 32 (2) employs more than fifty (50) employees;
- 33 the income payor shall make payments to the state central collection  
 34 unit through electronic funds transfer.
- 35 (c) **The department of child services shall assess a civil penalty**  
 36 **of twenty-five dollars (\$25) per obligor per pay period against an**  
 37 **income payor that:**
- 38 (1) **is required to make a payment through electronic funds**  
 39 **transfer under subsection (b); and**
- 40 (2) **does not make the payment through electronic funds**  
 41 **transfer.**
- 42 **The department shall deposit the penalties into the state general**

1 **fund."**

2 Page 42, between lines 31 and 32, begin a new paragraph and insert  
3 the following:

4 "SECTION 113. [EFFECTIVE JULY 1, 2005] (a) **On July 1, 2005,**  
5 **the following occur:**

6 (1) **The division of family and children established by**  
7 **IC 12-13-1-1 becomes the division of family resources.**

8 (2) **The powers, duties, and functions of the division of family**  
9 **and children are transferred to the division of family**  
10 **resources.**

11 (3) **A reference in the Indiana Code or the Indiana**  
12 **Administrative Code to the division of family and children**  
13 **shall be construed as a reference to the division of family**  
14 **resources.**

15 (4) **The property and records of the division of family and**  
16 **children are transferred to the division of family resources.**

17 (5) **Any appropriations made to the division of family and**  
18 **children are transferred to the division of family resources.**

19 (6) **An individual who is an employee of the division of family**  
20 **and children becomes an employee of the division of family**  
21 **resources. The employee is entitled to have the employee's**  
22 **service before July 1, 2005, recognized for the purposes of**  
23 **computing retention points under IC 4-15-2-32 if a layoff**  
24 **occurs and all other applicable employee benefits.**

25 (7) **Rules adopted by the division of family and children before**  
26 **July 1, 2005, are considered after June 30, 2005, to be rules of**  
27 **the division of family resources.**

28 (8) **The division of family resources shall amend references to**  
29 **the division of family and children in rules adopted by the**  
30 **division of family and children before July 1, 2005, to reflect**  
31 **the change described in subdivision (1).**

32 (b) **The legislative services agency shall prepare legislation for**  
33 **introduction in the 2006 regular session of the general assembly to**  
34 **make appropriate changes in statutes that are required as a result**

- 1       **of the occurrences described in this SECTION.**
- 2       **(c) This SECTION expires December 31, 2009."**
- 3       Renumber all SECTIONS consecutively.  
      (Reference is to SB 529 as introduced.)

**and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.**

Committee Vote: Yeas 10, Nays 0.

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**Senator Miller, Chairperson**